IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.1930 of 1995

Shri Raghunath Dagadu Hajare
adult, occ service
residing at post Sarat
Tal Indapur Dist.Pune..... Petitioner

vs.

l. The Dy Director
The Scrutiny .Committee
Tribal Research and Training Inst
Mah State 28 Queens Garden
Pune

2. State of Maharashtra through
its Secretary, Tribal Social
Welfare Department
Mantralaya, Mumbai 400 032

3. The Union of India
   through its Social Welfare and
   Tribal Department having its
   office at Aayakar Bhavan Church
   gate Bombay 20

4. The Chief Officer
   Phaltan Nagar Parishad, Phaltan
   Office, Phaltan, Dist.Satara

5. Phaltan Nagar Parishad
   Phaltan Dist.Satara ..respondents

Shri K.H.Chopda for petitioner
Shri C.R.Sonawane, A.G.P. for respondents.

CORAM: A.P.SHAH &
S.U.KAMDAR JJ.
16th Setember, 2004

Oral Judgment (Per.A.P.Shah J)

By this petition the petitioner seeks to challenge the order passed by the Caste Scrutiny Committee dated l4.l2.l994 rejecting the claim of the petitioner that he belongs to Mahadeo Koli, Scheduled Tribe.

2 The petitioner joined the service of respondent no. 4 on a reserved vacancy as a peon on 9.ll.l989. It appears that the respondent no. 4 referred the petitioner's claim to the Scrutiny Committee for verification of his caste. The Scrutiny Committee vide order dated l4.l2.l994 rejected the petitioner's caste claim and held that the petitioner does not belong to the schedule tribe of Mahadeo Koli. The Committee noted in its order that the caste of the petitioner was recorded as Hindu Koli which is socially, culturally different from Mahadeo Koli which is included as a scheduled tribe in the Presidential Notification.

3. Mr.Chopda, learned counsel appearing for the petitioner has not pressed the challenge to the report of the Scrutiny Committee. However, the

learned counsel drew our attention to paragraph 4 at page 24 of the Government Resolution dated l5.6.l995 which reads as under:

> "4.The reservation granted to the above quoted "Special Backward Class" is applicable to the Direct Recruitments and also promotions. Similarly the principle of creamy layer shall not apply to this class. The persons belonging to this class already recruited on the basis of S.T.Certificate in Government, Semi Government services and obtained promotions should not be reverted or terminated".

4. It is apparent from paragraph 4 of the Government Resolution reservation granted to the abovequoted "Special Backward Class" is applicable to the District Recruitments and also promotions and the persons belonging to this class already recruited on the basis of Schedule Tribe Certificate in Government, Semi Government services and obtained promotions shall not be reverted or

terminated. There is no dispute before us that the respondents are bound to follow the mandate of the said Government Resolution. The Government Resolution fell for consideration of the Division Bench of this Court in Writ Petition No.l84l of l999 (decided by N J Pandya and J A Patil JJ on 30.ll.l999) and the Bench held as follows:

> "When the first part of the said Government Resolution is read in conjunction of the later part, in our opinion,m it is quite obvious that though in the later part, a candidate being recruited and obtained promotion can be read in conjunction but when paragraph is read in its entirety, it is quite obvious that this part is also to be read disjunctively and not conjunctively. In other words, paragraph does not protect only those cases where after recruitment and promotion having been obtained,they will not loose the job.
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> As we read the Government Resolution, it is

quite obvious that in respect of the Special Backward Class, a question, as carved out by this G R whether those persons are eligible to get protection when already they have got employment as said in the GR and later on a question would arise whether they are protected or not. The internal promotion, in our opinion, therefore, is not a requirement of being eligible for getting benefit of the said G.R".

5. A similar view is taken by the Division Bench in Writ Petition No.2l39 of l997 in the case of Shri Sunil Laxman Palase vs State of Maharashtra and ors (decided by V.P.Tipnis and Y.S.Jahagirdar JJ on 28.4.l997).

6. In our opinion after the Government Resolution dated l5.6.l995 has been brought into force, the services of the petitioner are liable to be protected as he falls in the category of Koli which is designated as a Special Backward Class vide Government Resolution dated l5.6.l995.

7. In the result, the petition is partly allowed and the order of the Scrutiny Committee is maintained and it is declared that the petitioner does not belong to Mahadeo Koli Tribe but belong to Koli community. Consequently the petitioner will be entitled to the protection of Government Resolution dated l5.6.l995. Petition is accordingly disposed of.

8. The petitioner’s counsel makes a statement that the petitioner will not claim any benefits as belonging to Mahadeo Poli, Scheduled Tribe. An affidavit to that effect to be filed in the proceedings within two weeks from today .